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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,443	04/20/2004	Richard Baer	10030568-1	4008

7590 12/10/2007
AGILENT TECHNOLOGIES, INC.
Legal Department, DL 429
Intellectual Property Administration
P.O. Box 7599
Loveland, CO 80537-0599

EXAMINER

KOZIOL, STEPHEN R

ART UNIT	PAPER NUMBER
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2624

MAIL DATE	DELIVERY MODE
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12/10/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/828,443

Applicant(s)

BAER, RICHARD

Examiner

Stephen R. Koziol

Art Unit

2624

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 November 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-14, 17-28, 30, and 32-33.
Claim(s) withdrawn from consideration: _____.

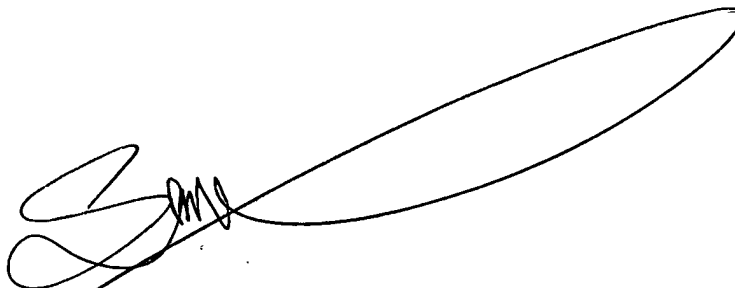
AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's reply does not overcome the outstanding rejections in the final office action.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

SAMIR AHMED
SUPERVISORY PATENT EXAMINER

ADVISORY ACTION

1. Applicant's remarks filed 11/23/2007 have been fully considered, but do not place the application in condition for allowance.

With respect to claim 1, Applicant asserts that Janiak fails to teach a data card comprising an image sensor (Remarks/Arguments pp. 8-10, 11/23/2007). However, Janiak does teach from par 0027: "[a]dditionally, the data card can be a smart card, where transactional data can be collected and stored, but it can also be processed and used directly by the smart card in particular applications. Therefore, a card that is read-only, read-and-write, or read-write-transactional is contemplated by data card 16." Transactional data would necessarily comprise fingerprint data, as the goal of Janiak's system to authenticate a user of the biometric data card based on biometric fingerprint data (Janiak par. 0030). This transactional data (necessarily comprising fingerprint data, as indicated *supra*) is *collected* and stored by the smart card embodiment of Janiak's biometric data card, which is read-only, read-and-write, or read-write-transactional relative to transactional data (par. 0027). Such collecting of biometric fingerprint data (transactional data) necessarily requires an appropriate image sensor on said smart card capable of said collecting and storing of biometric fingerprint data. Therefore, Janiak does in fact disclose a biometric data card with an image sensor as required by claim 1, and also discloses each and every other limitation of claim 1 as indicated in the previous office action (09/18/2007).

With respect to claim 2, Applicant disagrees with Examiner's assertion that Janiak teaches an interface operable to transmit the authentication information from the biometric data card to the

terminal (Remarks/Arguments pp. 10, 11/23/2007). As indicated re claim 1 *supra*, Janiak teaches the biometric data card of claim 1. Janiak also teaches that for performing authentication, the biometric data card is inserted into a terminal (figure 1 item 12) wherein fingerprint data is read from the biometric data card by the terminal and subsequently authentication is preformed (Janiak pars. 0027 and 0039). Thus, "authentication information" as claimed, given its broadest reasonable interpretation, necessarily includes fingerprint data (as fingerprints are being authenticated), read by the terminal from the biometric data card, and used for authentication. Therefore, Janiak does in fact teach transmitting the authentication information (comprising fingerprint information) from the biometric data card to the terminal. Note that claim 2 does not specify that the authentication is performed within the biometric data card itself, but only requires an interface for transferring authentication information (which comprises fingerprint data) from the a biometric data card to a terminal.

With respect to claim 5, Applicant does not see where Janiak teaches a biometric data card having an optical element for transferring the image to said image sensor (Remarks/Arguments pp. 10, 11/23/2007). The biometric data card and transfer of image information is taught by Janiak as indicated re claims 1 and 2 *supra*. A biometric data card with an *optical* element for transferring the image to said image sensor is disclosed by Janiak in at least pars. 0033 and 0036, where the system of figure 1, including the biometric data card, is described in an embodiment conducive to optical image transfer. Therefore, Janiak does in fact teach a biometric data card having an optical element for transferring the image to said image sensor.

With respect to claim 11, Applicant disagrees with Examiner's assertion that Janiak discloses a terminal for authenticating a user, the terminal comprising an optical element that forms an image of a biometric feature and directs the image onto an image sensor within a biometric data card. The biometric data card with image sensor is disclosed by Janiak as indicated re claim 1 *supra*. An authentication terminal comprising an optical element that forms an image of a biometric feature and directs the image onto an image sensor within a biometric data card is disclosed by Janiak in at least pars. 0036 and 0039, and as indicated in the optical authentication embodiment re claim 5 *supra*. Therefore, an optical element that forms an image of a biometric feature and directs the image onto an image sensor within a biometric data card is in fact taught by Janiak.

With respect to claims 19-21 and 32, Applicant disagrees with Examiner, but does not advance a substantive argument that would help resolve this disagreement. Therefore, the grounds of rejection present in the final office action (09/18/2007) are maintained.

For all remaining claims, Applicant relies on arguments addressed in the above paragraphs.

In conclusion, all rejections present in the final office action (09/18/2007) are maintained in this Advisory Action.

Conclusion

2. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the Final Rejection, whichever is later. In no event, however, will the statutory period for replay expire later than SIX MONTHS from the mailing date of the final rejection.

Contact

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Koziol whose telephone number is (571) 270-1844. The examiner can normally be reached on M - alt. F 8:00-5:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samir Ahmed can be reached at (571) 272-7413. Customer Service can be reached at (571) 272-2600. The fax number for the organization where this application or proceeding is assigned is (571) 273-7332.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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